

ASSEMBLY BILL

No. 279

Introduced by Assembly Member Duvall

February 12, 2009

An act to add Sections 17053.99 and 23699 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 279, as introduced, Duvall. Taxes: credits: Great Schools Tax Credit Act.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, for each taxable year beginning on or after January 1, 2010, allow a credit in an amount equal to the total contributions made to a scholarship granting organization, as defined, by a qualified taxpayer during the taxable year, not to exceed a specified amount. This bill would impose specified duties on the Franchise Tax Board in administering the credits.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Great Schools Tax Credit Act.
- 3 SEC. 2. Section 17053.99 is added to the Revenue and Taxation
- 4 Code, to read:

1 17053.99. (a) For each taxable year beginning on or after
2 January 1, 2010, there shall be allowed to a qualified taxpayer as
3 a credit against the “net tax,” as defined in Section 17039, an
4 amount equal to the total contributions made to a scholarship
5 granting organization during the taxable year for which the credit
6 is claimed, not to exceed 50 percent of the qualified taxpayer’s
7 “net tax” for the taxable year.

8 (b) For purposes of this section:

9 (1) “Educational scholarship” means a grant made to an eligible
10 student to cover all or part of the tuition and fees, including
11 transportation to a qualified school outside of the eligible student’s
12 resident school district, at either a public or nonpublic qualified
13 school.

14 (2) (A) “Eligible student” means either of the following:

15 (i) A student who is a member of a household whose total annual
16 income during the calendar year before he or she receives an
17 educational scholarship from a scholarship granting organization
18 does not exceed an amount equal to two and one-half times the
19 income standard used to qualify for a free or reduced lunch price
20 under the Richard B. Russell National School Lunch Act (42 U.S.C.
21 Sec. 1751 et seq.), who was eligible to attend a public school in
22 the semester preceding receipt of the educational scholarship or
23 is attending school in California for the first time, and who resides
24 in California while receiving the educational scholarship.

25 (ii) A student who qualifies for free or reduced price lunch under
26 the Richard B. Russell National School Lunch Act (42 U.S.C. Sec.
27 1751 et seq.).

28 (B) A student remains an “eligible student” under this section
29 until he or she graduates high school or reaches 21 years of age,
30 regardless of household income.

31 (3) “Parent” means a parent, a legal guardian, a conservator, a
32 person acting as a parent of a child, or any other person with legal
33 authority to act on behalf of the child.

34 (4) “Qualified school” means a public elementary or secondary
35 school located in California that is outside of the eligible student’s
36 resident school district or a nonpublic elementary or secondary
37 school in California that complies with the requirements of this
38 section. A qualified school shall comply with all state laws that
39 apply to nonpublic schools regarding criminal background checks

1 for employees and exclude from employment any person not
2 permitted by state law to work in a nonpublic school.

3 (5) “Qualified taxpayer” means a taxpayer who files an income
4 tax return in this state and is not claimed as a dependent for income
5 tax purposes by any other taxpayer.

6 (6) “Scholarship granting organization” means an organization
7 that complies with the requirements of this section and provides
8 educational scholarships to eligible students attending qualified
9 schools of their parents choice.

10 (c) In the case where the credit allowed by this section exceeds
11 the “net tax,” the excess may be carried over to reduce the “net
12 tax” in the following year, and the three succeeding years if
13 necessary, until the credit is exhausted.

14 (d) No credit shall be allowed pursuant to this section unless
15 the scholarship granting organization does all of the following:

16 (1) Notifies the Franchise Tax Board of its intent to provide
17 educational scholarships to eligible students attending qualified
18 schools.

19 (2) Provides the Franchise Tax Board with the Internal Revenue
20 Service’s Letter of Determination of tax-exempt status under
21 Section 501(c)(3) of the Internal Revenue Code.

22 (3) Provides the qualified taxpayer with a Franchise Tax
23 Board-approved receipt substantiating the contribution made by
24 the qualified taxpayer to the scholarship granting organization.

25 (4) Ensures that at least 90 percent of its revenue from donations
26 is expended on educational scholarships.

27 (5) Spends a portion of expenditures each year on educational
28 scholarships for students eligible under clause (ii) of subparagraph
29 (A) of paragraph (2) of subdivision (b) equal to the percentage of
30 low-income eligible students in the county where the scholarship
31 granting organization expends the majority of its educational
32 scholarships.

33 (6) Ensures that at least ____% of first time recipients of
34 educational scholarships were not continuously enrolled in a
35 nonpublic school during the previous year.

36 (7) Distributes periodic educational scholarship payments as
37 checks made out to an eligible student’s parent and mailed to the
38 qualified school where the qualified student is enrolled. The check
39 shall be endorsed by the parent or guardian prior to deposit.

1 (8) Cooperates with the Franchise Tax Board, or its designee,
2 in conducting criminal background checks of all of its employees
3 and board members and excludes from employment or governance
4 any individual who might reasonably pose a risk to the appropriate
5 use of contributed funds.

6 (9) Ensures that educational scholarships are portable during
7 the school year and may be used at any qualified school that accepts
8 the eligible student according to a parent's wishes. If an eligible
9 student moves to a new qualified school during a school year, the
10 educational scholarship may be prorated.

11 (10) (A) Demonstrates its financial accountability to the
12 Franchise Tax Board by submitting a financial information report,
13 conducted by a certified public accountant, that complies with
14 uniform financial accounting standards and is certified by an
15 auditor as free of material misstatements.

16 (B) If the scholarship granting organization receives donations
17 of fifty thousand dollars (\$50,000) or more during the school year,
18 the scholarship granting organization shall demonstrate its financial
19 accountability by either of the following:

20 (i) Filing a surety bond with Franchise Tax Board, payable to
21 the State of California, in an amount equal to the aggregate amount
22 of contributions expected to be received during the school year.

23 (ii) Filing financial information prior to the school year with
24 Franchise Tax Board that demonstrates the financial viability of
25 the scholarship granting organization.

26 (11) Ensures that educational scholarships are not provided to
27 eligible students to attend a qualified school with paid staff or
28 board members, or relatives thereof, in common with the
29 scholarship granting organization.

30 (e) No credit shall be allowed pursuant to this section unless a
31 qualified school that accepts educational scholarships from a
32 scholarship granting organization does all of the following:

33 (1) Complies with all health and safety laws or codes that apply
34 to nonpublic schools.

35 (2) Obtains a valid occupancy permit for its grounds if required
36 by its municipality.

37 (3) Certifies that it will not discriminate in its admissions on
38 the basis of race, color, national origin, religion, or disability.

1 (4) Provides academic accountability to parents of eligible
2 students who receive educational scholarships by regularly report
3 to the parent on the student's progress.

4 (f) On or before June 1 of each calendar year, a scholarship
5 granting organization shall report to the Franchise Tax Board the
6 following information prepared by a certified public accountant
7 regarding the previous calendar year's educational scholarships:

8 (1) The name and address of the scholarship granting
9 organization.

10 (2) The total number and dollar amount of contributions received
11 during the previous calendar year.

12 (3) The total number and dollar amount of educational
13 scholarships awarded during the previous calendar year, the total
14 number and total dollar amount of educational scholarships
15 awarded during the previous year to eligible students qualifying
16 for the federal free and reduced price lunch program, and the
17 percentage of first-time recipients of educational scholarships who
18 were continuously enrolled in a public school during the previous
19 year.

20 (g) For purposes of this section, the Franchise Tax Board shall
21 do all of the following:

22 (1) Promulgate any rules and regulations necessary to implement
23 this section.

24 (2) Provide a standardized format for a receipt to be issued by
25 a scholarship granting organization to a qualified taxpayer to
26 indicate the value of a received contribution. The Franchise Tax
27 Board shall require a qualified taxpayer to provide a copy of this
28 receipt when claiming a credit under this section.

29 (3) Provide a standardized format for scholarship granting
30 organizations to report the information required by paragraph (1)
31 of subdivision (d).

32 (4) Conduct either a financial review or audit of a scholarship
33 granting organization if in possession of evidence of fraud.

34 (5) (A) Bar a scholarship granting organization from
35 participating in the program if the Franchise Tax Board establishes
36 that the scholarship granting organization has intentionally and
37 substantially failed to comply with the requirements of this section.

38 (B) If the Franchise Tax Board bars a scholarship granting
39 organization, it shall notify any affected eligible students and their
40 parents of this decision as soon as possible.

(C) Allow a qualified taxpayer to divert a prorated share of state income tax withholdings to a scholarship granting organization of the qualified taxpayer's choice, up to the maximum credit allowed by law, including carryover credits. The Franchise Tax Board shall promulgate rules and regulation necessary to implement this subparagraph.

SEC. 3. Section 23699 is added to the Revenue and Taxation Code, to read:

23699. (a) For each taxable year beginning on or after January 1, 2010, there shall be allowed to a qualified taxpayer as a credit against the "tax," as defined in Section 23036, an amount equal to the total contributions made to a scholarship granting organization during the taxable year for which the credit is claimed, not to exceed 50 percent of the qualified taxpayer's "tax" for the taxable year.

(b) For purposes of this section:

(1) "Educational scholarship" means a grant made to an eligible student to cover all or part of the tuition and fees, including transportation to a qualified school outside of the eligible student's resident school district, at either a public or nonpublic qualified school.

(2) (A) "Eligible student" means either of the following:

(i) A student who is a member of a household whose total annual income during the calendar year before he or she receives an educational scholarship from a scholarship granting organization does not exceed an amount equal to two and one-half times the income standard used to qualify for a free or reduced lunch price under the Richard B. Russell National School Lunch Act (42 U.S.C. Sec. 1751 et seq.), who was eligible to attend a public school in the semester preceding receipt of the educational scholarship or is attending school in California for the first time, and who resides in California while receiving the educational scholarship.

(ii) A student who qualifies for free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. Sec. 1751 et seq.).

(B) A student remains an eligible student under this section until he or she graduates high school or reaches 21 years of age, regardless of household income.

1 (3) “Parent” means a parent, a legal guardian, a conservator, a
2 person acting as a parent of a child, or any other person with legal
3 authority to act on behalf of the child.

4 (4) “Qualified school” means a public elementary or secondary
5 school located in California that is outside of the eligible student’s
6 resident school district or a nonpublic elementary or secondary
7 school in California that complies with the requirements of this
8 section. A qualified school shall comply with all state laws that
9 apply to nonpublic schools regarding criminal background checks
10 for employees and exclude from employment any person not
11 permitted by state law to work in a nonpublic school.

12 (5) “Qualified taxpayer” means a taxpayer who files an income
13 tax return in this state and is not claimed as a dependent for income
14 tax purposes by any other taxpayer.

15 (6) “Scholarship granting organization” means an organization
16 that complies with the requirements of this section and provides
17 educational scholarships to eligible students attending qualified
18 schools of their parents choice.

19 (c) In the case where the credit allowed by this section exceeds
20 the “tax,” the excess may be carried over to reduce the “tax” in
21 the following year, and the three succeeding years if necessary,
22 until the credit is exhausted.

23 (d) No credit shall be allowed pursuant to this section unless
24 the scholarship granting organization does all of the following:

25 (1) Notifies the Franchise Tax Board of its intent to provide
26 educational scholarships to eligible students attending qualified
27 schools.

28 (2) Provides the Franchise Tax Board with the Internal Revenue
29 Service’s Letter of Determination of tax-exempt status under
30 Section 501(c)(3) of the Internal Revenue Code.

31 (3) Provides the qualified taxpayer with an Franchise Tax
32 Board-approved receipt substantiating the contribution made by
33 the qualified taxpayer to the scholarship granting organization.

34 (4) Ensures that at least 90 percent of its revenue from donations
35 is expended on educational scholarships.

36 (5) Spends a portion of expenditures each year on educational
37 scholarships for students eligible under clause (ii) of subparagraph
38 (A) of paragraph (2) of subdivision (b) equal to the percentage of
39 low-income eligible students in the county where the scholarship

1 granting organization expends the majority of its educational
2 scholarships.

3 (6) Ensures that at least ____% of first time recipients of
4 educational scholarships were not continuously enrolled in a
5 nonpublic school during the previous year.

6 (7) Distributes periodic educational scholarship payments as
7 checks made out to an eligible student's parent and mailed to the
8 qualified school where the qualified student is enrolled. The check
9 shall be endorsed by the parent or guardian prior to deposit.

10 (8) Cooperates with the Franchise Tax Board, or its designee,
11 in conducting criminal background checks of all of its employees
12 and board members and excludes from employment or governance
13 any individual who might reasonably pose a risk to the appropriate
14 use of contributed funds.

15 (9) Ensures that educational scholarships are portable during
16 the school year and may be used at any qualified school that accepts
17 the eligible student according to a parent's wishes. If an eligible
18 student moves to a new qualified school during a school year, the
19 educational scholarship may be prorated.

20 (10) (A) Demonstrates its financial accountability to the
21 Franchise Tax Board by submitting a financial information report,
22 conducted by a certified public accountant, that complies with
23 uniform financial accounting standards and is certified by an
24 auditor as free of material misstatements.

25 (B) If the scholarship granting organization receives donations
26 of fifty thousand dollars (\$50,000) or more during the school year,
27 the scholarship granting organization shall demonstrate its financial
28 accountability by either of the following:

29 (i) Filing a surety bond with Franchise Tax Board, payable to
30 the State of California, in an amount equal to the aggregate amount
31 of contributions expected to be received during the school year.

32 (ii) Filing financial information prior to the school year with
33 Franchise Tax Board that demonstrates the financial viability of
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35 (11) Ensures that educational scholarships are not provided to
36 eligible students to attend a qualified school with paid staff or
37 board members, or relatives thereof, in common with the
38 scholarship granting organization.

1 (e) No credit shall be allowed pursuant to this section unless a
2 qualified school that accepts educational scholarships from a
3 scholarship granting organization does all of the following:

4 (1) Complies with all health and safety laws or codes that apply
5 to nonpublic schools.

6 (2) Obtains a valid occupancy permit for its grounds if required
7 by its municipality.

8 (3) Certifies that it will not discriminate in its admissions on
9 the basis of race, color, national origin, religion, or disability.

10 (4) Provides academic accountability to parents of eligible
11 students who receive educational scholarships by regularly report
12 to the parent on the student's progress.

13 (f) On or before June 1 of each calendar year, a scholarship
14 granting organization shall report to the Franchise Tax Board the
15 following information prepared by a certified public accountant
16 regarding the previous calendar year's educational scholarships:

17 (1) The name and address of the scholarship granting
18 organization.

19 (2) The total number and dollar amount of contributions received
20 during the previous calendar year.

21 (3) The total number and dollar amount of educational
22 scholarships awarded during the previous calendar year, the total
23 number and total dollar amount of educational scholarships
24 awarded during the previous year to eligible students qualifying
25 for the federal free and reduced price lunch program, and the
26 percentage of first-time recipients of educational scholarships who
27 were continuously enrolled in a public school during the previous
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30 do all of the following:

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34 a scholarship granting organization to a qualified taxpayer to
35 indicate the value of a received contribution. The Franchise Tax
36 Board shall require a qualified taxpayer to provide a copy of this
37 receipt when claiming a credit under this section.

38 (3) Provide a standardized format for scholarship granting
39 organizations to report the information required by paragraph (1)
40 of subdivision (d).

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2 granting organization if in possession of evidence of fraud.

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4 participating in the program if the Franchise Tax Board establishes
5 that the scholarship granting organization has intentionally and
6 substantially failed to comply with the requirements of this section.

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8 organization, it shall notify any affected eligible students and their
9 parents of this decision as soon as possible.

10 (C) Allow a qualified taxpayer to divert a prorated share of state
11 income tax withholdings to a scholarship granting organization of
12 the qualified taxpayer's choice, up to the maximum credit allowed
13 by law, including carryover credits. The Franchise Tax Board shall
14 promulgate rules and regulation necessary to implement this
15 subparagraph.

16 SEC. 4. This act provides for a tax levy within the meaning of
17 Article IV of the Constitution and shall go into immediate effect.